
(1881) 02 CAL CK 0007

Calcutta High Court

Case No: None

Huro Prosad Roy

APPELLANT

Vs

Womatara Debee

RESPONDENT

Date of Decision: Feb. 15, 1881

Citation: (1881) ILR (Cal) 263

Hon'ble Judges: McDonell, J; Field, J

Bench: Division Bench

Judgement

McDonell, J.

This is a suit for enhancement of rent. The defendant is a tenant, under the plaintiff, of a holding, which originally consisted of 1,202 bighas, and the rent of which was originally fixed at Rs. 641-1-1. Three grounds of enhancement were set out in the plaint. The first ground is, that the quantity of land held by the defendant is more than that for which rent was formerly paid. He says, that the quantity of land is now 1,900 instead of 1,202 bighas. The second ground is, that the productive powers of the land have increased; and the third ground is, that the value of the produce has increased.

2. As to the first two grounds there is no question in the present appeal, and the third ground is the only one with which we have to deal. That prices have, within the last twenty, thirty, or forty years, increased considerably in these provinces is a matter as to which few reasonable people have any doubt. At the same time, in any particular case, it is necessary that evidence of this increase of price be produced before the Court which has to decide the question of enhancement; and this evidence must be such as the law declares to be relevant and admissible.

3. In the present case, the evidence which was produced before the Subordinate Judge to prove the increase of the price or value of the produce was the testimony of a number of witnesses belonging to the cultivating class, who stated from memory the prices which, to their knowledge, have prevailed in the locality for a number of years back. The Subordinate Judge dealt with the testimony of these

witnesses, and upon this evidence he came to a certain conclusion. Whether upon this evidence this conclusion was right or wrong, is a question into which we do not propose to enter. The case then came on appeal before the District Judge of the 24 Pargannas. The learned District Judge in his judgment first refers to certain arithmetical errors in the calculations of the Subordinate Judge. He then notices certain matters which formed the subject of a cross-appeal, and observes that the defendant contended that the extra expenses of protection of the land from salt water and of cutting and conveying crops to market absorbed the extra profits. He then notices a point, which was the subject of argument in the course of the hearing of the appeal, namely, that the Subordinate Judge was incorrect in his method of striking an average. In this Court it has been said that ten years is too long a period for a fair average, and that five years is reasonable period. The Judge then cursorily refers to certain former cases instituted for enhancement of the rent of the lands which form the subject of the present suit. Having thus noticed these points, he then, without definitely disposing of any of them, proceeds as follows:---"First as to the evidence offered by plaintiff to prove increased value and produce. Eight witnesses were examined, none of them hold under defendant; generally speaking, they hold neighbouring land. They appear to be substantial cultivators with retentive memories. The first gives the price of grain thirty-four years ago, and generally gives a comparison between prices now and then and intermediately. The rest are much the same; and the Subordinate Judge sweeps all their evidence away, and adopts some of the figures of one witness, Panch Cowree. I confess I cannot understand why Panch Cowree is selected, or why, apparently, his highest figure is to be taken. The fact is, this sort of evidence ought not to satisfy any Court of the relative value of produce in any given period. I do not know a more difficult subject of inquiry, and I have frequently hold---and I see no reason for change of opinion---that the price of grain during a short or long series of years must be proved by the evidence of men who have something more than memory to fall back upon. We have nothing to do with the quantity of produce in which case the evidence of practical cultivators might be of more value than that of grain dealers. Value of produce can and should be proved by traders and merchants with books of accounts by which memory could be refreshed and tested. I shall, therefore, hold that the evidence in this case is no safe guide to the value of produce, and cannot be acted upon."

4. Now it has been contended on the part of the appellant, that the District Judge has here prescribed a general rule as to the evidence to be given in this class of cases; that he has in fact said that he will not consider or take into account any evidence which consists merely of the oral testimony of witnesses of the cultivating class; and that the only evidence which he will regard as relevant in an inquiry of this kind, is the evidence of traders and merchants with books of accounts, by referring to which they may refresh their memory. It is said that the Judge cannot thus make for himself new rules of evidence; and that it is our duty to set aside a judgment

based upon reasoning which states with a mistaken view of the relevancy of evidence.

5. On the other hand, it has been argued that the remarks of the District Judge which we have above quoted, were not intended to lay down in any general rule as to the kind of evidence relevant in this class of cases; but they are to be read merely as observations dealing with the witnesses and the evidence in this particular case, and stating the grounds upon which the Judge considers this evidence to be unworthy of credit. And it has been further contended that, as the Judge has disbelieved this evidence, we are bound by this finding, and cannot on second appeal question the Judge's disbelief.

6. It appears to us that even if the District Judge did not say, or intend to say, that he would absolutely refuse to consider evidence of the nature of that produced by the plaintiff, he has yet, in his strong feeling of preference for another species of evidence not produced, virtually done this so far as the present appellant is concerned; that he has substantially omitted to consider the evidence upon the record, and this, for a reason which cannot be supported---the reason, namely, that the fact to be proved ought to be proved by evidence of another kind than that produced. We entertain no doubt that in thus putting (sic)tting to consider the relevant evidence actually produced upon (sic)al question in the case, the District Judge committed an error in law which we are competent, and indeed bound, to deal with on second appeal. Some cases have been cited to us, to show that this Court has repeatedly refused to interfere on second appeal where the Judge of a Lower Appellate Court has given an erroneous and improper reason for disbelieving or setting no value upon evidence. There are, however, many cases which support a different view. *M. S. Degumber Dossee v. Kissendhur Nundy* (1 Ind. Jur. N. S. 35), *Gunee Biswas v. Sreegopal Paul Chowdhry* (8 W. E. 395), *Ram Das Saha v. Manmahini Dasi* (7 B. L. R. App. 4), *Shundhabun Mohunt v. Shurut Chunder Roy* (28 W. R. 160), *M. S. Roop Narainee Kooer v. Ressel Tewaree* (24 W. R. 119), *Surrosutty Dossee v. Umbika Nund Biswas* (Ibid, 192), *Sheo Pursum Pandey v. Brun Pandey* (24 W. R. 251), *Chand Monee Dossee v. Obhoy Churn Mal* (Ibid, 289) *Abdul Bohman v. Bibee Sofy Mikhayesh Saheba* (Ibid, 293), *Bustee Sahoo v. Jeo Narain Singh* (Ibid, 338), *Bibee Ameerun v. Shaikh Cherag Ali* (Ibid, 343), *Hunsa Kooer v. Shoo Gobind Rooot* (Ibid, 431). Without attempting to reconcile the decisions on this point, which can be properly estimated only with reference to the facts of the particular cases, we may observe that there is a material difference between a case in which a Judge has assigned one bad reason for believing or disbelieving a particular piece of evidence, while he has given one or more good reasons for the same belief or disbelief; or a case in which, putting this particular piece of evidence wholly aside, enough remains to support the judgment, and a case in which the essential question, or one of the essential questions, to be decided rests upon the evidence believed or disbelieved, regarded as of great value or considered worthless for a reason which is unsound and unsustainable. In the case now before us, evidence such as that to which the

District Judge refers---the evidence, that is, of traders and merchants with books of accounts---would no doubt be valuable for certain purposes; but-it is to be observed that this evidence, if produced, would go to show the price of grain at fairs, bazars, and other places of trade. The difference between that price and the price paid for the crops upon the spot where they are grown, or at the nearest market at which they are usually sold, may vary considerably. The witnesses who have been called by the plaintiff are the holders of land in the neighbourhood, who may not unreasonably be supposed to remember the prices at which they have sold their crops from year to year either upon the lands where they were grown, or at the nearest market available to, and frequented by, the tenants. That such evidence is relevant in this case, and that such evidence ought to be fairly considered and weighed, we apprehend there can be no doubt.

7. We think, therefore, that the case must go back in order that this evidence may be duly considered; and that upon this evidence the District Judge may find whether there has been the increase of price alleged by the plaintiff, or any other increase of price which will entitle him to enhancement of rent upon the only ground with which this appeal is concerned. The case will be remanded to the District Judge, who will proceed to deal with it and with the questions raised in the cross-appeal in conformity with the directions contained in this judgment.

8. Appeals Nos. 2413 and 2415 are admittedly governed by this decision.

9. The costs of these appeals will be costs in the suit, and will abide the final result.